

CALIFORNIA WATER PLAN UPDATE 2009
REGIONAL TRIBAL WATER PLENARY MEETING #4

Owens Valley Waters

hosted by Bishop Paiute Tribe, April 23, 2009, Bishop, CA

MEETING SUMMARY

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(1) Welcome, Greetings and Agenda

Monty Bengochia, Bishop Paiute Tribal Chairman, opened the meeting with a prayer and welcomed guests.

Juliette Nabahe, Water Quality Coordinator for the Bishop Paiute Tribe; Julie Griffith-Flatter, Sierra Nevada Conservancy; and Barbara Cross, Government and Community Liaison, California Department of Water Resources (DWR), also welcomed guests.

Wilfred J. Nabahe, facilitator, walked participants through the agenda and reviewed the basic ground rules for conversation. All present introduced themselves, stating their name and affiliation. Wilfred then made opening comments about perceptions about Tribal water rights, the current drought situation, and the drought response measures being discussed to reduce California's water consumption by 20%.

(2) The California Water Plan Update 2009 and Tribal Engagement

Barbara Cross presented a video overview by Kamyar Guivetchi, Manager, Statewide Integrated Water Management, DWR. In the video, Kamyar described the collaborative processes which led to the development of the Public Review Draft of the California Water Plan Update 2009, for which comments are due to DWR by June 5, 2009.

Barbara followed the video with a summary of Tribal participation in the process to date. She reviewed the work of the Tribal Communication Committee, which had been meeting since October 2007 and produced a Tribal Communication Plan in the summer of 2008; the Tribal Water Stories Project; and the Tribal Water Summit planning process. Barbara explained that all people with an interest are encouraged and invited to participate in the monthly planning

meetings for the Summit. Barbara indicated that input from each Regional Tribal meeting will be shared with following meetings.

Juliette asked whether the May 1st “deadline” for submitting tribal water stories was a firm one, and Barbara responded that she did not think it was, as there is some anticipation that Tribes may be submitting their water stories at the Tribal Water Summit.

(3) Tribal Caucus Discussion on Key Summit Issues, Part I

To encourage discussion for this meeting, Wilfred reviewed some of the water issues raised by Tribes in previous Regional Tribal Water Plenaries, as shown on the mind map diagrams included in handouts. He asked for people to bring forth key water issues of the region, and suggest possible solutions. Following is a summary of the discussion, including solutions if mentioned:

1. Mismanagement of Water Resources by Federal, State and Local Government Agencies

Participants remarked that several projects in the area are having adverse impacts on water resources, such as a geothermal power project which is depleting ground water in excess of normal recharge. These impacts do not respect political boundaries, and are negatively affecting health of all people, not just tribal communities.

Potential solutions include:

- Tribe should develop relationships beyond their reservations -- Senators, congressmen, federal agencies, and others -- to help promote the delivery of Federal fiduciary responsibilities
- Enforcement of existing laws to shape solutions
- Improved land use planning

2. Climate Change

One participant raised the question of “What are the impacts on water exports when the systems are already over-allocated, even in ‘good’ water years?” Since so much of the water in the Owens Valley is exported to the City of Los Angeles, Tribes are concerned about the potential impact of climate change on water resources.

Potential solutions include:

- Tribes should begin developing drought contingency plans, if they haven’t done so already
- Owens Valley Tribes should begin preparing for potential flooding due to a decrease in snowfall but increased rainfall during the winter months
- Tribes should develop and strengthen their emergency preparedness plans

3. Environmental Justice

It was brought up that Tribes in the Owens Valley have not yet discussed their water rights relative to how Los Angeles and its drinking water delivery system was developed. Was the

jobs relocation program in the 1930s and 1940s to remove Indians from the Owens Valley? It was discussed that Owens Valley Indians shared lands throughout Indian Country, and in this area there were bands and families, not “Tribes.” The question was then asked, “Who signed over the indigenous peoples’ land and water rights?” Putting these people on reservations is an environmental justice issue because they were disproportionately affected by decisions that negatively impacted their environment, land, and waters.

Potential solutions include:

- Settle outstanding water claims
- Enforce existing environmental laws to protect human health

4. Water Rights

There was lengthy discussion among participants about Tribes and water rights. A major problem noted was that Tribes in the Owens Valley, with the exception of Fort Independence, do not have their water rights quantified. Chairman Bengochia noted that in earlier environmental documentation, Los Angeles interests claimed that Owens Valley Tribes have no water rights, but he would like to argue that the Tribes do have a water right, just that it has not been quantified. Another participant commented that there are two types of water rights: (1) inherent for domestic sovereigns under the Marshall Trilogy, and (2) permitted through regulatory agencies. The US government has not fulfilled its commitment to Tribes for water, and the “practicable irrigable acreage” (PIA) standard is not appropriate for modern Tribal economic development and lifestyles. Additional issues are that the state refuses to engage with Tribes in water allocation, and the enforcement of existing water rights is not a priority of federal and state agencies. It was noted that other states are working with Tribes to settle Tribal water rights, e.g., the City of Phoenix is leasing water from Gila River Tribe.

Potential solutions include:

- Encourage Tribes with water rights to document quantities of water they are now using. This is critical to establish proof of needs for current and future growth, or to have the ability to sell what they don’t need
- Map old irrigation ditches, which are evidence of Tribal irrigation practices before European settlement

5. Illegal Diversions

Participants discussed known or suspected illegal surface water diversions that are affecting downstream tribal users. In addition, non-Indian land development is encroaching on Tribal lands by proximity and increasing the occurrence of illegal water diversions.

Potential solutions include:

- File lawsuits to uphold existing acts and agreements, and counter illegal diversions
- Use the examples of water distribution agreements and guidelines from other states as examples for California
- Tribes need to build relationships with elected officials in local, state, and federal government to settle out of court

- Tribes need to document their water supplies to establish records to prove adverse effects from illegal diversions

6. Access to Native Plants

A recent change in federal policy greatly restricts access to plant materials for traditional uses. Participants also noted that changes in regional hydrology are affecting the distribution of native plant species and eliminating/changing traditional gathering sites. For example, as creeks are diverted and dry up, riparian vegetation is lost.

A potential solution includes:

- Restore and manage floodplains to encourage the repopulation of native species

7. Lack of Enforcement

Participants discussed the lack of enforcement regarding water resources by city, county, state, and federal agencies. The issue is complicated because oftentimes activities that negatively affect water quality and water resources can cross multiple jurisdictions, and yet no single agency is willing to enforce the law protecting that resource. Tribes do not know who they can turn to for help when it comes to enforcement issues, both on and off the reservation. Tribes often don't have the resources to establish their own police force to deal with these issues and violations on tribal land.

Potential solutions include:

- File lawsuits to uphold existing laws and agreements
- Tribes need to build relationships with elected officials in local, state, and federal government to encourage enforcement of laws and regulations

8. Tourism

It was acknowledged that tourism is a major contributor to the health of the local economy, yet tourism is having tremendous effects on the local environment. Growth of the tourism industry in Owens Valley can have adverse impacts on water quality of creeks, lakes, and ground water, and the ecosystems that depend on those water resources. There is a conflict in that people come to the Owens Valley to enjoy the outdoors, and yet it is during their visit, their actions potentially impact water resources negatively, and it is the local communities that are left to deal with the consequences.

Potential solutions include:

- Educating tourists and visitors about their impact on the environment, and voluntary steps they can take to reduce their footprint
- Stricter environmental codes on tourism, and increased enforcement.

9. Fire and Flood Management

It was discussed that the loss of vegetation poses significant flood and safety hazards in the wet season following major fires. Counties and forestry agencies are discussing appropriate

mitigation and early warning systems. Also, fire management practices affect the watershed in various ways.

Potential solutions include:

- Work with appropriate agencies to prepare for natural disasters
- Share experiences among tribes who have dealt with flooding after a fire, learn from their mistakes and successes

Prior to breaking for lunch, Julie Griffith-Flatter announced to that the Sierra Nevada Conservancy is currently working on a grant to help fund the Tribal Water Summit.

(4) Tribal Caucus Discussion on Key Summit Issues, Part II

Following a lunch recess, hosted by the Bishop Paiute Tribe, the Facilitator Wilfred Nabahe introduced the second Tribal caucus discussion, focused on water quality. He described several case studies where there was a lack of political will to take enforcement action against environmental degradation of water resources by business interests: (1) Pig farms in North Carolina watersheds killed all fish on a 4-mile stretch of river, harming the health and livelihood of the entire area; (2) On the Klamath River 33,000 salmon died, yet problems remain with toxic levels of blue-green algae, and lax enforcement by federal agencies.

Richard Stewart added that in Fort Independence, ditches contaminated with harmful runoff flowed into Tribal pastures. The Tribe took extra steps to clean up off-reservation streams. He noted that the EPA has funding for non-point source pollution to monitor and fix up-stream contamination. He noted that the water used to rinse concrete mixers is also a polluter. Regardless of the administration, enforcement is lax in these and many such cases.

Wilfred continued on to suggest Tribes take measures to restore streams and prevent recurrence. He noted that Fort Independence is now working cooperatively with counties, LADWP, and other parties to improve water quality for all. He suggested Tribes should make their concerns known to other governments, and work with them toward solutions. This led to open discussion of additional water issues in the Owens Valley:

10. Data Sharing, including the Freedom of Information Act

Ground water monitoring data was discussed in detail, with divergent views among the participants about data sharing with non-tribal entities. It was agreed that data from both shallow and deep wells is needed for court arguments, and perhaps to quantify water rights. It was suggested that Tribes need to monitor ALL their ground water production, and maintain records from monitoring wells. Data such as this is needed to establish patterns of usage, and for management decisions. It was suggested that sharing data may lead to help from other governments with Tribal management decisions. Some say this is giving up sovereignty; others disagree.

There were concerns among participants about the Freedom of Information Act regarding funding for data gathering. Since most tribes in the Owens Valley received federal funding to collect groundwater data, it was argued that that data is public information.

Others argued that it is sensitive information, and could potentially harm the tribe, especially since most Tribes in the Owens Valley have not had their water rights quantified. Can the data be used against them? It was added that if a Tribe's water sources are culturally important, culturally sensitive, they may not be willing to share such data freely. Another participant stated that data sharing by Tribes can be to the Tribes' benefit by filling in data gaps, and demonstrating mutual respect and trust towards outside agencies.

A potential solution includes:

- Each Tribe's situation is different. It should be up to the Tribal leadership and their legal counsel to determine if they should share data, and if a Tribe choose to share data, they should consider the risks, rewards, and mutual benefits, and expect mutual respect.

11. The Need for Better Communication

Tribes need to communicate with neighboring agencies and communities on sources and uses of water, and to access each others' information. This would better inform permitting processes. Tribes regularly communicate amongst each other about problems and difficulties they are encountering, but rarely share this information with the outside world.

Potential solutions include:

- Improved communication with local, state, and federal government agencies
- Reach out to news media to spotlight tribal issues

12. The Need for Greater Tribal Political Will and Resources

There was some discussion amongst participants about the frustrations tribal staff encounter due to lack of political action by tribal leadership. Staff can only do so much, but it's tribal leaders who need to take action because they are the ones with political clout. Tribes need to exercise their sovereignty more, and exert themselves as equals when dealing with other government entities. This can be difficult due to the high turn-over in tribal leadership, because many terms are only for two years.

A potential solution includes:

- Improve communication and stress important issues with elected leadership early on so they understand which issues are a priority and require their action

13. Emergency Preparedness and Self-Sufficiency

There was the comment that for national defense purposes, sustainable yield of water resources, and energy sources, may have already been mapped and quantified. Tribes need to begin taking the steps to ensure their people are taken care of in the event of an emergency. Historically, Tribes are used to being prepared, but this is harder now because of man-made developments. Tribes should plan to sustain themselves in emergency situations, including floods and climate change. They need to ask the questions like, "Will cell phones work?", and "Can we grow our own food?" The answers may not be in modern technology but in traditional knowledge. Emergency preparedness planning was also discussed. Someone needs to be in charge, e.g. notifications, transportation plan, collection points.

Potential solutions include:

- Improved land use planning – Tribes should work toward self-sufficiency with their land uses
- Improved awareness of local natural resources and emergency plans
- People should think collectively, look beyond reservation boundaries, and share costs of emergency preparedness with neighbors

(5) Integrated Regional Water Management Plan — The Inyo-Mono IRWMP Formation and Tribal Participation

Juliette Nabahe, Bishop Paiute Tribe, introduced Dr. Mark Drew from CalTrout, who is the project manager for launching the Inyo-Mono Integrated Regional Water Management Planning Project. With Propositions 50 and 84, the state is encouraging the development of regional approaches to water planning and management. Integrated Regional Water Management Plans (IRWMPs) are the center of three focal points for state funding: protecting water quality, water use efficiency, and environmental stewardship. These are voluntary, open door public processes, seeking multiple benefits, and opportunities to address common issues of a region. IRWMPs are non-regulatory, and do not override other programs. Some state funding may require that projects be included in an IRWMP. In answer to concerns that IRWMPs are state-dominated, Mark indicated the opposite is true. The state is asking regions to define their own priorities. The Inyo-Mono IRWMP has requested funding for pre-planning, to position the region for future implementation funding available under Proposition 50/84.

The first meeting of I-MIRWMP interested stakeholders occurred in February 2009. CalTrout has assisted with the development of a governance structure and monthly meetings, including extensive outreach. A steering committee makes recommendations to the 40-member Planning coordination committee. With the state's original August 2008 deadline extended to July 2010 or later, the I-MIRWMP is slightly ahead of DWR's calendar. A budget subcommittee is discussing work that can proceed without waiting for state funding. The plan is expected to be completed by spring 2010 to then compete for a state implementation grant in July 2010.

The I-MIRWMP has created a forum for discussion, and giving voices to interests other than LADWP and Inyo County. LADWP is actively involved. The Sierra Nevada Conservancy and CalTrout have provided grants and in-kind services toward this effort. The website is a clearinghouse for information.

The I-MIRWMP plans to submit its paperwork for DWR's Regional Acceptance Process by April 27. This will establish the boundaries and interests of the IRWMP in the Proposition 84 framework. There is a Memorandum of Understanding which formalizes the engagement of participating entities.

Q&A: Someone asked whether existing IRWMPs have an advantage for state funding. Mark replied not necessarily, but there are concerns. DWR is pushing for the inclusion of disadvantaged communities, but funds for travel are not provided. This doesn't help the disadvantaged communities get to the table. Climate change is now being considered in IRWMPs along with other water-related issues. Under CEQA, the Lead Agency would be either the permitting agency for a specific project, or a state agency.

(6) Attendance

Carmen Armitage, Timbisha Shoshone
Alan Babcock, Big Pine Paiute Tribe
Julie K. Bear, Sierra Nevada Conservancy
Richard Button, Cone Pine P.S.R.
Teri Cawelti, Owens Valley Indian Water Commission
Barbara Cross, California Department of Water Resources
Mark Drew, CalTrout
Julie Griffith-Flatter, Sierra Nevada Conservancy
Lynelle Hartway, Washoe Tribe
Bill Helmer, Big Pine Paiute Tribe
Darla Heil, Owens Valley Indian Water Commission
Anthony Karl, Big Pine Paiute Tribe
Juliette Nabahe, Bishop Paiute
Sanford Nabahe, Lone Pine Paiute Shoshone
Wilfred J. Nabahe, Lone Pine Paiute Shoshone Reservation
Cynthia Naha, Lone Pine Paiute Shoshone Reservation
Richard Stewart, Fort Independence Reservation
Theresa Stone, Bishop Tribe
BryAnna Vaughan, Bishop Paiute

Issues Identified at the California Water Plan Update 2009 Owens Valley Regional Tribal Water Plenary Meeting, April 23, 2009

